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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MIKE AJLOUNY, Appellant, v. NINA GRIMM, Respondent; DEPARTMENT OF CHILD SUPPORT SERVICES, Respondent.	H043514 (Santa Clara County Super. Ct. No. 6-14-CP001587)

This appeal is from a March 2016 judgment ordering that appellant Mike Ajlouny pay to respondent Nina Grimm $2,945 in monthly child support, plus additional monthly support of $750 for reasonable child care costs, for their child, R. Ajlouny, a self-represented litigant, asserts various claims of error on appeal. We conclude the court did not abuse its discretion and will affirm the judgment.

I. PROCEDURAL HISTORY[1]

This case was joined for trial with another proceeding, *In re Marriage of Christina and Mike Ajlouny* (Superior Court No. 6-11-FL-007189; the marital proceeding). An eight-day court trial was held between December 7 to 16, 2015. At issue in this case was the matter of temporary child support requested by Grimm from Ajlouny for their child, R. (then, nearly two years old). The court also addressed multiple issues in the marital proceeding, including child and spousal support from Ajlouny to his former wife, Christina Ajlouny.

After submission of both cases, the court filed a joint statement of decision on March 8, 2016. Ajlouny appealed that statement of decision as it pertained to the marital proceeding. In an opinion filed in January 2018, we affirmed the trial court's statement of decision. (*In re Marriage of Ajlouny* (Jan. 25, 2018, H043869) [nonpub. opn.].) Pursuant to Evidence Code sections 452, subdivision (d) and 459, subdivision (a), we take judicial notice of that opinion, and the statement of decision that was part of the record in that appeal. (See *ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd.* (2016) 5 Cal.App.5th 69, 73, fn. 3; see also *Flatley v. Mauro* (2006) 39 Cal.4th 299, 306, fn. 2 [judicial notice of court materials appropriate to "help complete the context of this case"].)[2]

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[1] Ajlouny in his appellate brief has not presented a summary of the procedural history of this case that addresses matters occurring prior to the trial. Further, the record before us does not include documents that would assist us in determining the procedural background of this case. (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 (*Ballard*) [appellant bears burden of presenting an adequate record].)

[2] In *In re Marriage of Ajlouny, supra*, H043869, this court affirmed the statement of decision in which the trial court had, inter alia, (1) denied Aljouny's requests to reduce or eliminate child and spousal support arrearages; (2) deemed it appropriate under Family Code section 4058, subdivision (b) to consider Ajlouny's earning capacity rather than actual earnings to determine support; (3) determined that Ajlouny had an earning capacity of $42,868 per month; (4) set child support at $5,409 per month; (5) set spousal support at $5,000 per month; (6) made a finding under Family Code section 4336 that the marriage had been one of long duration in that the parties had been married for more than

The trial court recited certain findings and conclusions in its statement of decision. It recited that in December 2013, Ajlouny and Grimm, his girlfriend at the time, had a child, R. Their romantic relationship ended in October 2014, at which time they signed an agreement under which Ajlouny had agreed, inter alia, to pay $1,000 per month for child support. The court recited further that, pursuant to an ex parte order issued in December 2014, Ajlouny was granted visitation on alternating weekends and five hours on Wednesdays, resulting in "about a 21% time share." The court found that this visitation schedule was followed through most of 2015 until a subsequent order was entered in November 2015 providing that Ajlouny would receive approximately 30 percent visitation. The court thereafter, at Ajlouny's request, modified the order to provide that he receive no visitation.

The court in its statement of decision ordered that Ajlouny pay Grimm a total of $6,784 in retroactive child support from September 1, 2015, through October 31, 2015. It ordered further that Ajlouny pay Grimm monthly child support of $2,945 from November 1, 2015, forward, plus one-half of monthly child care costs of $750, for a total of $3,695 per month. In so concluding, the trial court found as follows: "The court finds Ms. Grimm's testimony more credible than [Ajlouny's]. The court has determined that it is in the best interest of the children that [Ajlouny's] earning capacity of $42,868 per month be used to determine support in the [marital proceeding] and in this case. [Ajlouny] has clearly acted in bad faith in hiding his earnings and assets in order to avoid support[,] and his testimony and income and expense declarations are not credible in light of the lavish lifestyle he continues to live. Ms. Grimm[] testified at trial that she earns

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18 years; (7) found that the parties had enjoyed a high marital standard of living (see Fam. Code, § 4330, subd. (a)); (8) denied Ajlouny's requests to reduce child support and spousal support; and (9) ordered Ajlouny to pay Christina Ajlouny $50,000 in attorney fees and costs as sanctions under Family Code section 271, subdivision (a).

$5,583 per month, and that [Ajlouny] is not currently visiting, and she pays child care of approximately $1,500 per month for the minor child [R.]."

On March 8, 2016, the court entered judgment imposing the child support obligations as enunciated in the statement of decision. In the judgment, the court reiterated the findings referenced above that it had made in the statement of decision. Specifically, in the judgment, the court stated that (1) Ajlouny "acted in bad faith by deliberately concealing income and attempting to hide his income and assets in an effort to avoid his child support obligations"; (2) Ajlouny "was not credible"; (3) Ajlouny had "not met his burden to show any change in his earning capacity"; and (4) "since [Ajlouny] did not meet his burden of proof and because [he] demonstrated bad faith, the appropriate earning capacity to use for child support purposes for [Ajlouny] is as previously determined by [another judge in the marital proceeding] in 2012[,] which is $42,868.00 per month."

Ajlouny filed a timely appeal from the judgment. (See *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637 ["temporary support order is operative from the time of pronouncement, and it is directly appealable"].)

II. DISCUSSION

A. Standard of Review

An overarching principle guiding appellate review is that "[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

We review a trial court's award concerning child support for abuse of discretion. (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 555.) "In reviewing the exercise of that discretion for abuse, we consider whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citation.]" (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 229-230.) "We do not substitute

our judgment for that of the trial court, but confine ourselves to determining whether any judge could have reasonably made the challenged order." (*In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353, 1360.) Appellant bears the burden of establishing that the trial court abused its discretion. (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.)

B. Ajlouny Has Failed to Establish Error

1. Appellant's Contentions

Ajlouny's challenges to the judgment in his opening brief[3] are somewhat difficult to discern or summarize. The focus of Ajlouny's claim of error is that the court imposed a $3,695 monthly child support obligation upon him, notwithstanding his minimal income and his asserted inability to pay. As he did in his appeal in the marital proceeding, he argues that the court had no basis for imputing $42,868 of monthly income to him, and (he asserts) "there [was] no evidence that [he] ever possessed the ability to earn such income." He suggests that the imputed income for purposes of determining his child support obligation be adjusted "to the actual income of $300 to $1700 per month."

2. Noncompliance with Procedural Rules

Our determination of the merits of this appeal is controlled by Ajlouny's material noncompliance with rules of appellate procedure. As discussed below, this noncompliance may be generally categorized as involving Ajlouny's (1) failure to procure an adequate appellate record, (2) failure to include proper citations to the record in his appellate brief, (3) improperly referencing matters outside of the record, including subsequent procedural developments and settlement matters, (4) failure to adequately

[3] Ajlouny did not file a reply brief.

develop legal arguments in the appellate brief, and (5) failure to preserve issues for appeal.[4]

a. No Adequate Record

Ajlouny filed a timely notice of designating the record on appeal, including a clerk's transcript. It is apparent, however, that he failed to designate documents essential for our review of the judgment.[5]

The party challenging the trial court's ruling has the burden of showing reversible error by an adequate record. (*Ballard, supra*, 41 Cal.3d at p. 574.) When there is an inadequate record, we must presume any matters that could have been presented to support the trial court's order were in fact presented, and may affirm the trial court's determination on that basis. (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127 (*Bennett*).) An appellant's failure to present an adequate record will result in the issue being resolved against appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296;

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[4] We also note with great concern that in his opening brief, Ajlouny makes a number of unkind and offensive remarks about Grimm, counsel, Christina Ajlouny, and the lower court. Such improper and even scurrilous remarks have no place in appellate practice and do nothing to advance plaintiffs' case. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 412 ["unwarranted personal attacks [in appellate briefs] on the character or motives of the opposing party, counsel, or witnesses are inappropriate and may constitute misconduct"; *id.* at p. 422 ["Disparaging the trial judge is a tactic that is not taken lightly by a reviewing court."].) In the prior appeal, we had commented on Ajlouny's having made unkind remarks about counsel, Christina Ajlouny, and the lower court, and we had requested that the litigants conduct themselves in a respectful and professional manner. (*In re Marriage of Ajlouny, supra*, H043869 [p. 11, fn. 12].) We renew that request here.

[5] These omitted documents, some of which were referenced in the trial, include (1) Aljouny's income and expense declaration dated November 23, 2015; (2) Grimm's income and expense declaration of October 2015; (3) the trial court's tentative decision of January 27, 2016 (referenced in Ajlouny's objections to tentative decision filed February 11, 2016); (4) Grimm's proposed ruling on Ajlouny's objections to the tentative decision; (5) the court's ruling on Ajlouny's objections; (6) any prior orders concerning custody or support for R.; and (7) any documents concerning child support for R. that may have been filed prior to the trial.

see also *Bains v. Moores* (2009) 172 Cal.App.4th 445, 478 [rejecting claim that demurrer improperly sustained where appellant failed to present adequate record by including operative complaint and demurrers].)

Here, Ajlouny has failed to present all relevant documents from the court below that are necessary to adequately address his challenge to the judgment in this appeal. We will presume that any matters that could have been presented by Grimm to support the trial court's judgment were in fact presented. (*Bennett*, *supra*, 19 Cal.App.4th at p. 127.)

b. Omissions in Citations to Record

Ajlouny's opening brief is replete with statements of specific factual matters upon which he bases his claim that the court below erred. But he fails repeatedly to include citations to the appellate record identifying where the specific facts were presented to the trial court. For instance, his statement of the case consists of over nine pages of alleged facts without a single citation to the multi-volume reporter's transcripts of the trial. The section of his brief identified as being the statement of facts is not, in actuality, a statement of facts; it is merely argument. And the argument section of Aljouny's opening brief is likewise replete with alleged facts without citation to the record.

Examples of Ajlouny's recitation of unsupported facts are numerous. They include, without limitation, statements that (1) Aljouny cannot find work and is disabled; (2) Grimm insisted on placing the child in 50-hour per week child care despite Aljouny's ability to provide care for the child and his offer to Grimm to do so while she worked; (3) Aljouny had no assets when he and Grimm ended their relationship; (4) Grimm, during trial, asked for monthly child support in the amount of $750; (5) described in some detail the nature of Ajlouny's prior business as an independent Apple dealer, including a detailed accounting discussion; (6) explained Ajlouny's reasons for closing the business; (7) the court-ordered imputed income was based upon two prior tax returns, and Ajlouny would be unable to replicate the level of income found in those returns; (8) since the end of their relationship, Grimm had made over one million dollars; and (9) Ajlouny

"accumulated $800,000 in credit card debt to live off of for the past 5 years" and continues to owe money to banks. Moreover, Ajlouny's appellate brief does not include citations to the record regarding procedural matters which he contends occurred before trial.

Ajlouny's failure to include citations to the record in his appellate brief constitutes a violation of rule 8.204(a)(1)(C) of the California Rules of Court,[6] which requires that every brief "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited. [Citations.]" (*In re S.C., supra*, 138 Cal.App.4th at pp. 406-407; see also *Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451 (*Yeboah*) [factual statements in briefs "not supported by references to the record are disregarded" by the reviewing court].)

The difficulty presented by Ajlouny's failure to include record citations in support of his factual assertions is heightened in this case where the record—from an eight-day trial consisting of a reporter's transcript of approximately 1300 pages involving the testimony of more than 10 witnesses—is extensive. Ajlouny himself conceded in his appellate brief that there were "mountains of testimony and evidence" in this case. " 'We are a busy court which "cannot be expected to search through a voluminous record to discover evidence on a point raised by [a party] when his brief makes no reference to the pages where the evidence on the point can be found in the record." ' [Citations.]" (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 745.) We will therefore disregard Ajlouny's factual contentions and any references to procedural matters below

[6] Further rule references are to the California Rules of Court.

for which he has failed to provide citations to the record. (*Yeboah, supra*, 128 Cal.App.4th at p.451.)

c. Matters Outside the Record

A further, related, difficulty is presented by Ajlouny's failure to include citations to the record in support of facts raised in his appellate brief. Ajlouny refers in his opening brief—unsupported by citations to the record—to a number of extraneous alleged post-trial matters and procedural developments. These matters (assuming their existence) are not part of the appellate record. They include a settlement reached between Ajlouny and Christina Ajlouny, a lawsuit involving Grimm and her three sons, and an alleged affair Grimm had with an older man after the trial.

As appellant, Ajlouny is required by the California Rules of Court in his opening brief to "[p]rovide a summary of the significant facts *limited to matters in the record*." (Rule 8.204(a)(2)(C), italics added.) "Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.) We will therefore disregard extraneous matters outside the record that are referenced in Ajlouny's brief. (*Banning v. Newdow* (2004) 119 Cal.App.4th 438, 453, fn. 6 (*Banning*).)

d. Undeveloped Arguments

Ajlouny in his appellate brief makes a number of general assertions—unsupported by citations to the record—regarding his position that the court erred. For example, he takes issue with the trial court's decision to conduct a joint trial of the issues in this case and those in the marital proceeding. Ajlouny fails to state a cogent argument as to why this procedural decision by the trial court was erroneous. Nor does he provide this court with the background that led to the court's decision.[7] His apparent argument that the

[7] The record reflects that prior to commencement of testimony, Ajlouny requested that the matters be tried separately and that he was "not prepared to do two cases at one time." Christina Ajlouny, through her counsel, opposed the request for severance, arguing that Grimm would be a witness in the marital proceedings concerning Ajlouny's

court erred in denying his request for separate trials is contained in one sentence found in the conclusion section of his brief: "There is no reason why this case should not be independent of any other family matter."

A second unsupported assertion by Ajlouny is that the trial court apparently erred by failing to obtain a vocational evaluation concerning Ajlouny before it imputed income to him. He cites no authority, and presents no argument, in support of this assertion.

Other unsupported, conclusory statements made by Ajlouny—some, repeatedly—in his appellate brief include (1) "[t]he award is inequitably large and impossible for [Ajlouny] to pay"; (2) "[t]he judge reache[d] a conclusion that no other reasonable person could have reached based on the evidence"; (3) "[Ajlouny's] testimony [was] credible, precise, complete, and accurate"; (4) "[Ajlouony's] accounting methods reflect[ed an] accurate accounting of the businesses in question"; and (5) "[Ajlouony's] [p]rofit and loss statements [were] very accurate and detailed and ha[d] not been found to have any inaccuracies at all during both trials"

"Conclusory assertions of error are ineffective in raising issues on appeal. [Citation.]" (*Howard v. American Nat. Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 523, citing rule 8.204(a)(1)(B).) As a panel of this court has explained: "We are not bound to develop appellants' argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.) Thus, claims of error by Ajlouny that are not adequately developed in his appellate brief—including the

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transfer of his business to her in 2013; Grimm was previously joined as a party in the marital proceeding and had a right to be present at the trial; Ajlouny's income was the common factor in both cases in determining support; and because of the related issues, the court would need to take into consideration the support ordered in one case in fashioning the support order in the other case. The court, after hearing argument from all parties, denied Ajlouny's request for separate trials.

apparent claims that the court erred in denying his request for separate trials and in failing to order a vocational evaluation—are waived.

e. Unpreserved Claim of Error

Ajlouny contends that the court should have conducted a vocational evaluation of Ajlouny before imputing income. Ajlouny is barred from asserting this claim of error because he has not adequately developed it. (*In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830.) The claim is also forfeited because it was not preserved for appeal.

Ajlouny, as appellant, has the burden of establishing not only the merits of any claims of error, but also that he adequately preserved such claims by raising them below. This includes the obligation to demonstrate to the appellate court by citation to the record that appellant raised the issue (or objection) before the trial court. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 406.) Otherwise, the claim is forfeited. (*Ibid.*) This principle " 'is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law.' [Citations.]" (*Ibid.*)

In a dissolution proceeding, the court, upon noticed motion and for good cause shown, "*may* order a party to submit to an examination by a vocational training counselor." (Fam. Code, § 4331, subd. (a), italics added.) An order made pursuant to Family Code section 4331 is reviewed for abuse of discretion. (*In re Marriage of Stupp and Schilders* (2017) 11 Cal.App.5th 907, 912.) The present matter is not a dissolution proceeding; it is a case of temporary child support involving unmarried parties. In any event, it is inappropriate for an appellate court to consider whether the trial court properly exercised its discretion where, as here, it was not called upon to decide the matter. Since Ajlouny did not preserve the issue below by moving for a vocational evaluation order, he has forfeited any claim of error on appeal relating to the absence of such order. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 406; see, e.g., *Children's Hosp. and Medical Center v.*

Bonta (2002) 97 Cal.App.4th 740, 776-777 [objection that court lacked jurisdiction to issue attorney fee award forfeited due to party's failure to raise objection at trial level].)

3. Conclusion

In this appeal, Ajlouny challenges a discretionary order concerning temporary child support made by the trial court after it considered the evidence presented at a lengthy trial. The court provided a detailed statement of decision setting forth its reasoning in support of its orders with a recitation of the testimony and other evidence deemed relevant to the court's decision. Included in that statement of decision, as well as in the judgment, were findings that Ajlouny's testimony was not credible and that Grimm's testimony was credible. As stated in the judgment, the court found that (1) Ajlouny "acted in bad faith by deliberately concealing income and attempting to hide his income and assets in an effort to avoid his child support obligations"; (2) Ajlouny had "not met his burden to show any change in his earning capacity; and (3) "since [Ajlouny] did not meet his burden of proof and because [he] demonstrated bad faith," it was appropriate to find that his earning capacity, for child support purposes, to be $42,868.00 per month.

It was Ajlouny's burden, as the appellant, to show " 'a clear case of abuse . . . and . . . [that] there has been a miscarriage of justice' " from the trial court's decision. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) This is a " 'daunting task' confronting an appellant." (*Dreamweaver Andalusians, LLC v. Prudential Insurance Company of America* (2015) 234 Cal.App.4th 1168, 1171.) Ajlouny has failed to meet his burden of demonstrating error. He has not provided this court with an adequate record from which we can evaluate the judgment, and thus we will presume that all matters that could have been presented by Grimm to support the court's rulings were in fact presented. (*Bennett, supra*, 19 Cal.App.4th at p. 127.) His failure to include citations to the record in support of the numerous assertions of fact in his appellate brief renders it impossible for this court to assess the merits of his contentions, and we therefore deem them to lack foundation

and to be forfeited. (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 406-407.) We disregard any matters stated in Ajlouony's brief that are outside the appellate record. (*Banning*, *supra*, 119 Cal.App.4th at p. 453, fn. 6.) Moreover, to the extent Ajlouny makes general contentions, including undeveloped assertions of error, we treat them as having been waived. (*In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830.) And we find Ajlouny to have forfeited any challenge to the court's failure to order a vocational evaluation because he did not preserve the objection below. (*In re S.C.*, *supra*, at p. 406.)

We acknowledge that Ajlouny is representing himself in this appeal and has not had the formal legal training that would be beneficial in advocating his position. However, the rules of civil procedure apply with equal force to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, "[w]hen a litigant is appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

III. DISPOSITION

The judgment of March 8, 2016 is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

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